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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,380

07/14/2003

Ty Whitaker

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MARJAMA & BILINSKI LLP
250 SOUTH CLINTON STREET
SUITE 300
SYRACUSE, NY 13202

EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

05/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,380

Applicant(s)

WHITAKER ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/15/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The examiner offers the following explanation as to why the amended subject matter finds support in the disclosure. Applicant has established via the declaration filed 3/15/2007 that the conventional rate of pressure change in a cuff is 2-3 mmhg/sec. The specification incorporates two documents by reference which also use 3 mmhg/sec. The specification discloses the need to have a fast measurement cycle. In the context of the relevant background in the art, then when the specification states that it is a fast inflation cycle, it is the examiner's position that one skilled in the art would understand this to mean faster than conventional, or faster than 3 mmhg/sec.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6-10, 23-26, 31-35, and 46-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. These claims all recite a module for or step of sensing whether the patient is a neonate. The specification describes 2 methods to indicate that the patient is a neonate, flipping a switch or downloading the data. However, neither of these methods sense whether the patient is a neonate and it is unclear how one senses

whether a patient is a neonate. Accordingly, the claims are not enabled. Applicant might amend the wording of the claim to overcome this rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 27-30 rejected under 35 U.S.C. 102(b) as being anticipated by Harada et al 5759157 in view of Ogura 6524257. Harada has a device for measuring blood pressure including an inflatable chamber 10, a sensor 12 coupled to the inflatable chamber to measure information indicative of blood pressure, a control module 26 that receives the signal from the patient, a first analysis module 40 for measuring blood pressure during inflation of the inflatable chamber, a second analysis module 42 for measuring pressure during deflation of the inflatable chamber, where the second module is response to a control signal from the module that indicates that he first measurement was abnormal. Accordingly, blood pressure is measured using at least one of the first and second modules. The rate of inflation or deflation is not mentioned. Ogura teaches that it is known to continuously vary the cuff pressure by 5 mmhg/sec to measure blood pressure (see column 7, line 67). Harada appears to use the same inflation and deflation rate. Hence, it would have been obvious to modify Harada to use 5 mmhg/sec as the inflation and deflation rate, as it is merely the use of a well known rate in the art. Claim 2 is rejected in that deflation can be stepwise (see column 8, line 67). Claim 3 is rejected in that when the control signal is normal, the second module is

inhibited and when it is abnormal, the second module is activated. Claim 4 is rejected in that the blood pressure includes systolic and diastolic. Claim 5 is rejected in that the device includes a reporting module 38. Claims 27-30 are rejected in that Harada also performs the recited method, noting that the second module only measures pressure if necessary.

Claims 11-13, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura, as applied to claims 1-5 and 27-30 above, further in view of Taylor at al 6405076. Taylor et al includes a motion detector and allows blood pressure measurements to continue if the motion is below a threshold (see paragraph 6 in column 9). As such, it would have been obvious to modify Harada to include the noise reduction scheme of Taylor, to increase the accuracy of measurement.

Claims 14-17, 21-22, 39, 40, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura and Taylor at al 6405076, as applied to claims 11-13 and 36-38 above, further in view of Ueno 4870973. The Harada/Taylor combination stops measurement when motion exceeds a threshold, (see column 9, paragraph 4), but it does not notify the user when motion exceeds a threshold. Ueno displays a warning when artifact is detected and measurement is stopped (see abstract, for example). Hence, it would have been obvious to modify the above combination to use such a warning, to alert the user that too much motion or noise is present. Claims 15-17 are rejected in that the examiner takes official notice that both audible and visual warnings are well known. With respect to claims 21 and 22,

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the examiner notes that in the context of Harada, if the first measurement is stopped due to artifact, the second measurement would be enabled. Claims 39, 40, 44, and 45 are rejected for the reasons given above.

Claims 18-20 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada et al in view of Ogura, Taylor at al 6405076 and Ueno 4870973, as applied to claims 14-17, 21-22, 39, 40, and 44-45 above, further in view of Georgi 4592365. Georgi teaches that when measurement is stopped due to artifact, measurement can be resumed if the artifact level falls below the threshold within a predetermined time. Hence, it would have been obvious to modify the combination above to resume measurement, in order to save time needed to retake a measurement.

Applicant's arguments filed 3/15/2007 have been fully considered but they are not persuasive.

Applicant has intimated that there is no motivation to combine Harada and Taylor. It is the examiner's position that the motivation is explicit in the rejection, to reduce artifacts and increase accuracy.

The examiner recognizes that some of the rejections involve 4 and 5 references. However, it is the examiner's positions that the changes involved are motivated and do not destroy the operating function of the base reference.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ogura 6733460 (3-5 mmhg/sec), Oka 6610017 (2-5 mmhg/sec), Packman et al 6228035 (3-6 mmhg/sec), and Cuce et al 6165131 (6 mmhg/sec) all teach inflation or deflation rates above the standard of 2-3 mmhg/sec.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RLN

Robert L. Nasser
Primary Examiner
Art Unit 3735



ROBERT L. NASSER
PRIMARY EXAMINER

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December 11, 2006